

(3)

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No. 183

A. P. GIANNINI, Administrator of the Estate
of Virgil D. Giannini, Deceased,

Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
SUPPORTING BRIEF.

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FILED

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CHARLES ELMORE DROW

CLERK



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*To the Honorable Harlan Fiske Stone, Chief Justice
of the United States, and to the Honorable Asso-
ciate Justices of the Supreme Court of the United
States:*

A. P. Giannini, Administrator of the Estate of
Virgil D. Giannini, deceased, prays that a writ of
certiorari issue to review the judgment of the United

States Circuit Court of Appeals for the Ninth Circuit entered in the above cause on March 9, 1945, affirming a decision of the Tax Court of the United States.

OPINIONS BELOW.

The opinion of the Tax Court of the United States (R. 29-44) is reported in 2 T. C. 1160.

The opinion of the Circuit Court of Appeals (R. 99-104) is reported in 148 F. (2d) 285.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on March 9, 1945. Thereafter and within the time provided by the rules of said court, petitioner filed a petition for rehearing. The order denying rehearing was entered by the Circuit Court of Appeals on April 9, 1945. (R. 105.) The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925. (28 U.S.C.A. Sec. 347.)

STATUTES INVOLVED.

Sections 302(c), 302(i) of the Revenue Act of 1926, as amended. Said statutes are set forth in full in the appendix to this petition.

**SUMMARY STATEMENT OF FACTS AND THE
MATTER INVOLVED.**

The action below is an appeal from a decision of the Tax Court of the United States affirming a determination of a deficiency in estate tax against the Estate of Virgil D. Giannini, deceased.

At the time of his death, Virgil D. Giannini was one of the beneficiaries of a trust, hereinafter referred to as the Giannini trust. Said trust was created on October 1, 1935 by the members of the Giannini family: A. P. Giannini, Clorinda A. Giannini, husband and wife, and their three children, L. M. Giannini, Virgil D. Giannini, and Claire Giannini Hoffman. (R. 9, 26.) The members of the Giannini family had owned all the stock of the Giannini Company which was dissolved in 1935 and the assets of which were distributed to the stockholders. The assets of the Giannini Company which were distributed to the stockholders consisted of real and personal properties which were encumbered with certain liabilities and had a net value of \$457,039.96. (R. 9, 26, 56.) After distribution said assets were held in undivided interests by the Gianninis. Each of the children owned a 9.25% interest valued at \$43,284.62 and the balance was owned by Mr. and Mrs. A. P. Giannini. (R. 9. 26.)

A. P. Giannini felt that the property could be handled better and would be worth more if kept together, and he suggested to the children that if they would put their interests in a trust he and Mrs. Giannini would contribute their shares and would retain no interest in the trust. Pursuant to and as the

result of said suggestion, a trust was created on October 1, 1935, and the properties received from the Giannini Company were transferred to said trust. (R. 56, 57.) The value of the interest contributed by Virgil D. Giannini was \$43,284.62. The total value of all the properties transferred to the trust, less the liabilities assumed was \$457,039.96. (R. 9, 26.)

According to the trust provisions the net income from the property was to be distributed in equal shares to the children, or, if any were deceased, to his nominee or nominees. (R. 73, 100.) Each beneficiary could name by will his natural child or children to take his interest in the trust upon his death. If no nominee was named, his interest would augment the shares of the surviving beneficiaries. (R. 74, 76, 100.)

Virgil D. Giannini died April 28, 1938, unmarried and without issue. In accordance with the terms of Section 811(j), 26 U.S.C.A. Internal Revenue Code, the administrator of decedent's estate, taxpayer herein, elected to value the gross estate of the decedent as of one year after death. No property of the family trust was reported in the estate tax return. The Commissioner of Internal Revenue questioned the return, found the value of the decedent's 9.25% interest in the trust one year after his death to be \$46,072.04, and included said amount in the gross estate under the provisions of Section 302(c) of the Revenue Act of 1926. (R. 21-22.)

The Tax Court found, and it has been unquestioned herein, that as of the time the trust was created, the

right of Virgil D. Giannini to receive for life one-third of the income from the trust property substantially exceeded in value the property transferred to the trust by him. (R. 39, 100.)

Petitioner contended before the courts below that since as a part of the entire transaction and as inducement for the transfer of his interest in the property to the trust, Virgil D. Giannini received for life one-third of the income from all the property of the trust, including the property transferred by Mr. and Mrs. A. P. Giannini, Virgil received consideration in money's worth within the meaning of Section 302(i) of the Revenue Act of 1926, as amended. Petitioner further contended that since the fair market value of Virgil's life estate in the income from the property transferred by Mr. and Mrs. A. P. Giannini exceeded the fair market value of the property which Virgil transferred to the trust, both at the time of the transfer and at the time of his death, under the terms of Section 302(i) of the Revenue Act of 1926, as amended, there was no excess value to be included in his gross estate for estate tax purposes.

The Tax Court and the Circuit Court of Appeals held that since the transfers by Mr. and Mrs. A. P. Giannini to the trust were gifts by them to their children, they did not constitute consideration received by Virgil for his transfer within the meaning of Section 302(i) of the Revenue Act of 1926, as amended.

QUESTIONS PRESENTED.

(1) Where at the suggestion of his parents a man transfers property to a trust of which he and his brother and sister are beneficiaries with a life interest in the income of the trust, and the parents also transfer property to the trust but retain no interest therein and the son's life interest in the income from the property transferred by his parents has a fair market value which exceeds the value of the property which he transfers to the trust, does the son receive consideration for his transfer to the trust within the meaning of Section 302(i) of the Revenue Act of 1926?

(2) Does the fact that the transfers to the trust by the trustors who retain no beneficial interest in the trust are gifts within the meaning of the Gift Tax Act prevent the interest in the income therefrom which is received by a trustor-beneficiary from constituting consideration for the transfer of property to the trust by such trustor-beneficiary within the meaning of Section 302(i) of the Revenue Act of 1926, as amended?

(3) Does the fact that a payment of money or property to the decedent for his transfer of property was made in a transaction which was a gift by the payor for gift tax purposes preclude such money or property received by the decedent from being recognized as "consideration received" within the meaning of those words as used in that portion of Section 302(i) of the Revenue Act of 1926, which reads as follows: "there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on

account of such transaction, over the value of the consideration received therefor by the decedent”?

SPECIFICATION OF ERRORS.

In making and rendering its decision herein the Circuit Court of Appeals committed the following errors upon which your petitioner relies.

The Circuit Court of Appeals erred: .

(1) In determining that a payment of money or property to a decedent for his transfer of property under circumstances which make the payment a gift by the payor for gift tax purposes cannot constitute consideration received by the decedent within the meaning of Section 302(i) of the Revenue Act of 1926 as amended.

(2) In determining that the life interest in the income of the Giannini Trust which was received by Virgil D. Giannini and had an admitted value in excess of the fair market value of the property which he transferred to the trust did not constitute consideration received by him for the transfer of his property to said trust within the meaning of Section 302(i) of the Revenue Act of 1926, as amended.

(3) In affirming the decision of the Tax Court of the United States in favor of respondent.

**REASONS RELIED ON FOR THE ALLOWANCE
OF THE WRIT.**

(1) The Circuit Court of Appeals has decided an important question of federal law, which has not been, but should be, settled by this court.

(2) The decision of the Circuit Court of Appeals herein is in conflict in principle with decisions of other Circuit Courts of Appeals.

